

**ASSEMBLY BILL**

**No. 2102**

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**Introduced by Assembly Member Lieu**

February 18, 2010

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An act to amend Section 977 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 2102, as introduced, Lieu. Criminal procedure: court proceedings.

Existing law provides that in a misdemeanor proceeding, if the accused agrees, the initial court appearance, arraignment, and plea may be by video, as specified. Existing law provides that if the accused is charged with a misdemeanor offense involving domestic violence, as specified, the defendant shall be present in certain court proceedings.

This bill would remove the requirement that the accused agree to making these appearances by video and would remove the requirement that the accused shall be personally present pursuant to these provisions.

Existing law provides that in all cases in which a felony is charged, the accused shall be present at specified court proceedings and provides a process for the accused to waive his or her right to be personally present at all other proceedings, as specified. Existing law provides that if the accused agrees, the initial court appearance, arraignment, and plea may be by video, as specified.

This bill would remove the requirement that the accused be present at specified court proceedings, including those involving the presentation of and arguments on questions of fact and law and proceedings to be confronted by and cross-examine all witnesses, and remove the waiver process and instead provide that the accused may be present at all court

proceedings. The bill would remove the requirement that the accused agree to making the appearances noted above by video.

Existing law provides that if the defendant is represented by counsel, the attorney shall be present at specified court proceedings conducted via two-way electronic audiovideo communication. Existing law provides that the defendant shall have the right to make his or her plea while physically present in the courtroom if he or she so requests and provides for the waiver of this right.

This bill would remove the requirement that the defendant's attorney be present at these proceedings. The bill would remove the defendant's right to make his or her plea while physically present in the courtroom.

Vote: majority. Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1     SECTION 1. The Legislature finds and declares all of the  
2 following:

3     (a) Video arraignment increases courtroom efficiencies resulting  
4 in lower costs and fewer delays associated with transporting  
5 inmates and staffing courtrooms.

6     (b) Advances in videoconferencing technology and equipment  
7 have enabled a more cost-effective and comparable alternative to  
8 in-person proceedings with secure privacy protection.

9     (c) Video arraignment enhances peace officer and public safety  
10 and reduces risks associated with transporting inmates between  
11 the jail and the courtroom.

12     (d) Transportation and personnel expenses associated with  
13 providing security and supervision for inmates who are being  
14 transported between the jail and courtroom are reduced with the  
15 use of videoconferencing technology.

16     (e) Jail release efficiencies can be realized with video  
17 arraignment proceedings.

18     SEC. 2. Section 977 of the Penal Code is amended to read:

19     977. (a) (1) In all cases in which the accused is charged with  
20 a misdemeanor only, he or she may appear by counsel only, except  
21 as provided in paragraphs (2) and (3). ~~If the accused agrees, the~~  
22 ~~The~~ initial court appearance, arraignment, and plea may be by  
23 video, as provided by subdivision (c).

(2) If the accused is charged with a misdemeanor offense involving domestic violence, as defined in Section 6211 of the Family Code, or a misdemeanor violation of Section 273.6, the accused ~~shall~~ *may* be present for arraignment and sentencing, and at any time during the proceedings when ordered by the court for the purpose of being informed of the conditions of a protective order issued pursuant to Section 136.2.

(3) If the accused is charged with a misdemeanor offense involving driving under the influence, in an appropriate case, the court may order a defendant to be present for arraignment, at the time of plea, or at sentencing. For purposes of this paragraph, a misdemeanor offense involving driving under the influence shall include a misdemeanor violation of any of the following:

(A) Subdivision (b) of Section 191.5.

(B) Section 23103 as specified in Section 23103.5 of the Vehicle Code.

(C) Section 23152 of the Vehicle Code.

(D) Section 23153 of the Vehicle Code.

~~(b) (1)~~ In all cases in which a felony is charged, the accused ~~shall~~ *may* be present at the arraignment, at the time of plea, during the preliminary hearing, during those portions of the trial when evidence is taken before the trier of fact, and at the time of the imposition of sentence. ~~The accused shall be personally present at all other proceedings unless he or she shall, with leave of court, execute in open court, a written waiver of his or her right to be personally present, as provided by paragraph (2). If the accused agrees, the~~ The initial court appearance, arraignment, and plea may be by video, as provided by subdivision (c).

~~(2) The accused may execute a written waiver of his or her right to be personally present, approved by his or her counsel, and the waiver shall be filed with the court. However, the court may specifically direct the defendant to be personally present at any particular proceeding or portion thereof. The waiver shall be substantially in the following form:~~

**~~“Waiver of Defendant’s Personal Presence”~~**

~~“The undersigned defendant, having been advised of his or her right to be present at all stages of the proceedings, including, but not limited to, presentation of and arguments on questions of fact~~

1 and law, and to be confronted by and cross-examine all witnesses;  
2 hereby waives the right to be present at the hearing of any motion  
3 or other proceeding in this cause. The undersigned defendant  
4 hereby requests the court to proceed during every absence of the  
5 defendant that the court may permit pursuant to this waiver, and  
6 hereby agrees that his or her interest is represented at all times by  
7 the presence of his or her attorney the same as if the defendant  
8 were personally present in court, and further agrees that notice to  
9 his or her attorney that his or her presence in court on a particular  
10 day at a particular time is required is notice to the defendant of the  
11 requirement of his or her appearance at that time and place.”

12 (c) The court may permit the initial court appearance and  
13 arraignment of defendants held in any state, county, or local facility  
14 within the county on felony or misdemeanor charges, except for  
15 those defendants who were indicted by a grand jury, to be  
16 conducted by two-way electronic audiovideo communication  
17 between the defendant and the courtroom in lieu of the physical  
18 presence of the defendant in the courtroom. If the defendant is  
19 represented by counsel, the attorney ~~shall~~ *may* be present with the  
20 defendant at the initial court appearance and arraignment, and may  
21 enter a plea during the arraignment. However, if the defendant is  
22 represented by counsel at an arraignment on an information in a  
23 felony case, and if the defendant does not plead guilty or nolo  
24 contendere to any charge, the attorney ~~shall~~ *may* be present with  
25 the defendant or if the attorney is not present with the defendant,  
26 the attorney ~~shall~~ *may* be present in court during the hearing. ~~The~~  
27 ~~defendant shall have the right to make his or her plea while~~  
28 ~~physically present in the courtroom if he or she so requests. If the~~  
29 ~~defendant decides not to exercise the right to be physically present~~  
30 ~~in the courtroom, he or she shall execute a written waiver of that~~  
31 ~~right.~~ A judge may order a defendant’s personal appearance in  
32 court for the initial court appearance and arraignment. In a  
33 misdemeanor case, a judge may, pursuant to this subdivision,  
34 accept a plea of guilty or no contest from a defendant who is not  
35 physically in the courtroom. In a felony case, a judge may, pursuant  
36 to this subdivision, accept a plea of guilty or no contest from a  
37 defendant who is not physically in the courtroom if the parties  
38 stipulate thereto.

39 (d) Notwithstanding subdivision (c), if the defendant is  
40 represented by counsel, the attorney ~~shall~~ *may* be present with the

1 defendant in any county exceeding 4,000,000 persons in  
2 population.

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